IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15425 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NURULISLAM FAZLEKARIM CHAUDHARY - Petitioner(s)

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY & 2 - Respondent(s)

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Appearance :
MR KARTIK V PANDYA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 05/09/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenue has challenged the detention order 02.05.005 passed by the Police Commissioner, Ahmedabad City in exercise of powers conferred upon him under Sub-section (1) of Section 3 of the Gujarat Prevention Anti-social Activities Act, 1985 (" the Act" for short), as, the "immoral traffic offender" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Alongwith the detention order, the detenue was also served with the grounds of detention of the same date. In the said grounds, there is a reference of two

criminal cases which are filed under the Immoral Traffic (Prevention) Act. In the grounds of detention, the statements of certain witnesses have been recorded.

3. Learned advocate appearing on behalf of the petitioner has submitted that when the detention order dated 02.05.2005 came to be passed, the petitioner was in judicial custody in connection with two offences registered against him under the Immoral Traffic (Prevention) Act and there was no likelihood of continuing anti-social dangerous activities so as to disturb the public order by the detenue. It is submitted that there was no material before the detaining authority in respect of filing of the bail application or in respect of likelihood of petitioner being released on bail, which results i non-application of mind vitiating the detention

order.

4. On the other hand, Mrs. H.B.Punani, learned Assistant Government Pleader has tried to support the impugned detention order passed against the petitioner. Affidavit in reply is filed on behalf of respondent no.2.

5. The impugned order came to be challenged by the petitioner detenue on various grounds. It is not in dispute that the petitioner was in judicial custody when the detention order dated 02.05.2005 came to be passed by the detaining authority. Therefore, when the petitioner was in judicial custody, there was no likelihood of continuing antisocial dangerous activities as “Immoral Traffic Offender” so as to disturb the public order by the detenue. It is pertinent to note that

likelihood of filing of bail application by the petitioner and likelihood of releasing the petitioner on bail, both are entirely different and separate propositions. It is required to be noted that there must be some credible material before the detaining authority to reach to the subjective satisfaction either about likelihood of filing of bail application and/or likelihood of petitioner being released on bail. The facts of the present case are squarely covered by the decision of the Apex Court in the case of Amrutlal Vs. Union of India, reported in AIR 2000 SC 3675 wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenue was likely to be released on bail. Admittedly, the petitioner was in judicial custody and there was no material before the detaining authority to reach to

the subjective satisfaction that the detenue was likely to file the bail application and was likely to be released on bail and in absence thereof, the subjective satisfaction of the detaining authority is vitiated, and, therefore, the impugned detention order is required to be quashed and set aside.

6. In view of what is stated above, the petition is allowed. The order of detention dated 02.05.2005 is quashed and set aside. The detenue Nurulislam Fazlekarim Chaudhary is ordered to be set at liberty forthwith if not required in any other offence by any other authority. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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